

# DEATH PENALTY FACTS

EXHIBIT

DATE 3/9/07

SB 306

## INNOCENCE

Over 100 death row inmates (123) have been exonerated of the crimes for which they were accused! For complete details and pictures, go to:

<http://www.deathpenaltyinfo.org/article.php?scid=6&did=109>.

Innocent people are being executed in the United States. In the *Stanford Law Review*, H. Bedau and M. Radelet detailed 23 cases where innocent people had already been executed. (Miscarriages of Justice in Potentially Capital Cases, 40 *Stanford L. Rev.* 21 (1987)).

Columbia University professor James Liebman conducted a study of thousands of capital sentences reviewed by courts in 34 states from 1973 to 1995 and concluded, "One in twenty death row inmates is later found not guilty."

(<http://www.aclu.org/capital/innocence/10361pub20031209.html>).

The average individual exonerated of their crime takes several years to prove their case. This may take so long—an average of nine years—that they are unable to prove their innocence before being executed. (<http://www.deathpenaltyinfo.org/article.php?scid=45&did=1149#Sec05a>).

In Montana, wrongful convictions have already occurred in non-capital cases. Those convicted, but later proven innocent include: Chester Bauer (30 years for rape and assault), Jimmy Bromgard (30 years for aggravated burglary, sexual intercourse without consent), and Paul D. Kordonowy (40 years for sexual intercourse without consent). They were all convicted by faulty evidence, but later exonerated by updated DNA technology.

(<http://www.law.northwestern.edu/depts/clinic/wrongful/exonerations/MontanaList.htm>).

## CRUEL AND UNUSUAL PUNISHMENT

The death penalty is cruel because it is a relic of the earliest days of barbarism, when slavery, whipping, branding, and other corporal punishments were commonplace. Like those other practices, state-sponsored executions have no place in a civilized society. The death penalty is unusual because, of all Western industrialized nations, the United States alone engages in this lethal practice.

Capital punishment denies due process of law. Its imposition is often arbitrary—forever depriving an individual of the opportunity to benefit from new evidence or the setting aside of a death sentence.

Opposing the death penalty does not mean sympathy with convicted murderers. Murder clearly demonstrates a lack of respect for human life. Murder is abhorrent and a policy of state-sponsored killing is immoral. Killing more people only epitomizes the tragic brutality of violence, rather than utilizing reason to solve difficult social problems.

A society that respects life does not deliberately kill human beings. An execution is a violent public spectacle of official homicide, one that endorses killing to solve problems—the worst possible example to set for the citizenry. The benefits of capital punishment are illusory, but the bloodshed and the resulting destruction of community decency are real.

## DETERRENCE TO CRIME

Evidence has convinced most criminologists that there is no valid link between capital punishment and homicide rates (Radelet and Akers). The 38 death penalty states do not have lower rates of criminal homicide than the 12 non-death penalty states.

"The question of the supposed deterrent effect of capital punishment is perhaps the single most studied issue in the social sciences," writes Professor Eric M. Freedman. "The results are as unanimous as scholarly studies can be in finding the death penalty not to be a deterrent." (*The Death Penalty (A Contemporary Issues Companion)* ed. by Hayley R. Mitchell, p. 64).

Studies regularly find little difference in the murder rates of adjacent capital and non-capital jurisdictions, regardless of death penalty practices (Sellin, Thomson, Godfrey, Schiraldi). In

fact, non-death penalty jurisdictions consistently have lower homicide rates (Bureau of Justice Statistics, 2003).

Immediate impact studies that compare homicide rates following a highly publicized execution have found no decrease in murders directly after the execution and actually found that the murder rate increased (Dann, 1935, Thompson, 1999). If capital punishment deters, periods with an increase in executions should show a decrease in violent crime and murder. Studies find no such relationship (Sorenson, 1999; Baily, 1998, Cochran, 1994).

In Montana, recent research shows that executions have no effect on the amount of murders (Joanna M. Shepherd, "Deterrence Versus Brutalization: Capital Punishment's Differing Impacts Among States," September 2004).

Rates of homicide for North Dakota, Montana's only abolitionist neighbor, are consistently lower than Montana's rates of homicides (FBI Uniform Crime Statistics for 2005).

### **EQUAL PROTECTION**

Today, race of the victim, sex, and socio-economic status continue to influence whether a person receives a death sentence for a capital crime. If the victim is white, a defendant is more likely to be sentenced to death than crimes in which a non white victim is killed. More than 80% of capital cases involved a white victim, although nationally only 50% of murder victims are white ([www.deathpenaltyinfo.org/](http://www.deathpenaltyinfo.org/)).

Juries are more likely to convict defendants of color. Between 1995-2000, 75% of federal cases in which juries recommended the death penalty involved black or Latino defendants ([www.deathpenaltyinfo.org/](http://www.deathpenaltyinfo.org/)).

Only about 1% of all those on death row are women, even though women commit about 15% of all criminal homicides (Uniform Crime Reports, 1980-1990).

Discrimination against the poor (who are also often racial minorities) is well established. Approximately 90% of those on death row could not afford to hire a lawyer when they were tried. A defendant's poverty, lack of firm social roots in the community, inadequate legal representation at trial or on appeal – all these have been common factors among death-row populations. "One searches our chronicles in vain for the execution of any member of the affluent strata in this society," wrote Justice William O. Douglas in *Furman v. Georgia*, 408 U.S. 238. In 1994, Justice Harry Blackmun wrote "The death penalty remains fraught with arbitrariness, discrimination, caprice, and mistake."

In Montana, the death penalty is applied discriminatorily. 74 individuals have been executed in the name of the territory and state of Montana. Of those, almost 23% have been minorities. According to U.S. Census data statistics from 1870 – 1990, the minority population has never been over 11.1% in Montana. Thus, the rate of executions of minorities in Montana is almost twice the highest occurring combined minority percentage of the population.

### **COSTS:**

Every state that has done a cost study of its death penalty system has found it to be substantially more expensive than cases where prosecutors instead seek lengthy prison sentences (Sullivan 2004). On January 2, 2007, the New Jersey Death Penalty Study Commission stated: "Consistent with the Commission's findings, recent studies in states such as Tennessee, Kansas, Indiana, Florida and North Carolina have all concluded that the costs associated with death penalty cases are significantly higher than those associated with without parole cases." (NJ Death Penalty Study Commission Report, 2007)

For example, capital cases in Kansas are 70% more expensive than comparable noncapital cases, including all costs of incarceration (Kansas Performance Audit Report, December 2003). In Indiana, assuming 20% of death sentences are overturned and reduced to life, the total costs of the death penalty exceed the complete costs of life-without-parole sentences by 38% (Indiana Criminal Law Study Commission, January 10, 2002). Enforcing the death penalty costs Florida \$51 million per year above what it would cost to punish all first degree murderers with life-without-parole (*Palm Beach Post*, January 4, 2000).

The death penalty costs North Carolina \$2.16 million per execution over the costs of sentencing murderers to life imprisonment (Duke University, May, 1993). In Idaho, Cassia County Commissioner Paul Christensen stated that it costs approximately \$1 million to imprison a convicted defendant to life, whereas a death penalty case may cost five times that. (*Idaho Statesman*, 2003). In Texas, a death penalty case costs an average of \$2.3 million, about three times the cost of imprisoning someone in a single cell at the highest security level for 40 years (Hoppe, 1992).

Capital trials in California are six times more expensive than noncapital murder trials (Magagnini, 1988). In Connecticut, a commission appointed by the General Assembly compared the costs of judicial proceedings in capital versus non-capital cases and found that a death penalty case costs double that of a case where the person is sentenced to life in prison (CN General Assembly Commission on the Death Penalty, 2003).

Legislators need to remember that the high cost of capital punishment comes at the expense of other law-enforcement resources and public safety (*Just Revenge*, Dr. Mark Costanzo 1997). We must recognize that there are no appropriations for pursuing capital punishment cases. Therefore, every time an individual is charged with a capital crime, the money must be redirected from other law enforcement departments. A significant amount of money that could have been spent to fund additional police detectives, investigators, prosecutors, judges, and other resources to provide for Montana's public safety are unnecessarily spent on the death penalty system.

#### **METHOD FOR KILLING**

Montana's current method of administering lethal injections creates an unacceptable risk of unconstitutional pain and suffering. The way drugs are administered can subject the condemned to severe pain before death in violation of both the Montana and United States Constitutions. Over the last several months, courts in California, Delaware, Ohio, Pennsylvania and Tennessee, District of Columbia, and the United States Supreme Court have stayed executions pending investigations into the Constitutionality of lethal injection protocols similar to Montana's.

In addition, federal courts in Missouri and Arkansas have barred all executions by lethal injection until changes are made to those states' lethal injection protocols. The improper administration of injections can yield horrific results as there are significant risks that the inmate will be conscious or semi-conscious during his execution and will be fully cognizant of being asphyxiated and of experiencing cardiac arrest.